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THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

TRACY J. HEINECK,

Respondent.

Case No.: 11-6030-AA

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

Petitioner, United States of America, by Dwight C. Holton, United States Attorney for the District of Oregon, through Tim Simmons, Assistant United States Attorney (AUSA), petitions this Court to enforce the Internal Revenue Service Summons issued in the name of the Respondent, Tracy J. Heineck. The Petitioner United States submits the following as grounds for this petition.

This proceeding is brought pursuant to the provisions of sections 7402(b) and 7604(a) of the Internal Revenue Code of 1986, 26 U.S.C. §§ 7402(b) and 7604(a), to judicially enforce an Internal Revenue Service summons.

1. Teresa Kelly is a Revenue Officer of the Internal Revenue Service, employed in Small Business/Self-Employed Compliance Western Area Collection, and is

authorized to issue an Internal Revenue Service summons pursuant to the authority contained in Title 26 U.S.C. § 7602 and Treasury Regulations 301.7602-1 (26 C.F.R. § 301.7602-1).

2. Respondent Tracy J. Heineck resides in Lebanon, OR, 97355, within the jurisdiction of this court.

3. Revenue Officer Teresa Kelly is conducting an investigation into the collection of an assessed tax liability of Tracy J. Heineck for the 2008 taxable year, as is set forth in the Declaration of Revenue Officer Teresa Kelly attached hereto as Exhibit A.

4. Respondent is believed to be in possession and control of testimony and books, records, papers, and other data which are relevant to the above-described investigation.

5. On November 18, 2010, an Internal Revenue Service summons was issued by Revenue Officer Kelly directing the Respondent to appear on November 30, 2010, at 8:00 AM in Salem, OR, to testify and to produce books, records, and other data described in the summons. An attested copy of the summons was left at the last and usual place of abode of Respondent Heineck by Revenue Officer Kelly, on November 18, 2010, by affixing the said summons, which was in an envelope, to the locked gate of the respondent's last and usual place of abode. The summons is attached and incorporated as Exhibit B. On November 26, 2010, Revenue Officer Kelly received a letter from Respondent Heineck, which acknowledged respondent's receipt of the summons.

6. On November 30, 2010, Respondent did not appear in response to the summons. The Respondent's refusal to comply with the summons continues to date as is set forth in the Declaration of Revenue Officer Kelly attached as Exhibit A.

7. The books, papers, records, or other data sought by the summons are not already in possession of the Internal Revenue Service.

8. All administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken.

9. It is necessary to obtain the testimony and examine the books, papers, records, or other data sought by the summons in order to properly investigate the Federal tax liability of Tracy J. Heineck for the 2008 tax year, as is evidenced by the Declaration of Teresa Kelly attached and incorporated as part of this petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays:

A. That the Court issue an order directing Respondent to show cause, if any, why Respondent should not comply with and obey the aforementioned summons and each and every requirement thereof.

B. That the Court enter an order directing the Respondent to obey the aforementioned summons and each and every requirement thereof by ordering the attendance, testimony, and production of the books, papers, records, or other data as is required and called for by the terms of the summons before Revenue Officer Teresa Kelly or any other proper officer or employee of the Internal Revenue Service at such time and place as may be fixed by Revenue Officer

Teresa Kelly, or any other proper officer or employee of the Internal Revenue Service.

C. That the United States recover its costs in maintaining this action.

D. That the Court grant such other and further relief as is just and proper.

Dated this 25th day of January, 2011.

Respectfully submitted,

DWIGHT C. HOLTON
United States Attorney
District of Oregon

TIM SIMMONS
Assistant United States Attorney
Attorney for Petitioner United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.
	)	
TRACY J. HEINECK,	)	
	)	
Respondent.	)	

DECLARATION

Teresa Kelly declares:

1. I am a duly commissioned Revenue Officer employed in the Office of the Area Director, Small-Business/Self-Employed Compliance, Western Area of the Internal Revenue Service at 1660 Oak Street, SE, Suite 300, Salem, OR 97301.

2. In my capacity as a Revenue Officer, I am conducting an investigation into the collection of an income tax liability of Tracy J. Heineck for the taxable period ending December 31, 2008.

3. In furtherance of the above investigation and in accordance with § 7602 of Title 26, U.S.C., I issued on November 18, 2010, an Internal Revenue Service summons to respondent Tracy J. Heineck (hereinafter respondent) to give testimony and to produce for examination the records as described in said summons. The summons is attached to the petition as Exhibit B.

4. Pursuant to the summons, respondent was required to appear before me on November 30, 2010, at 8:00 A.M. at 1660 Oak

St., SE, Suite 300, Salem, OR 97301 to provide testimony and the requested records.

5. In accordance with § 7603 of Title 26, U.S.C., on November 18, 2010, I personally served an attested copy of the Internal Revenue Service summons described in paragraph 3 above to the respondent, as evidenced in the certificate of service on the reverse side of the summons, by taping the an envelope containing the attested copy of the summons to the locked gate at respondent's last and usual place of abode.

6. On November 26, 2010, I received a letter from respondent, which was dated November 22, 2010, by certified mail, in which respondent stated:

> *Due to the late notification, being that I am not currently within state, I am unable to attend the requested meeting.*
>
> *In regards to the mentioned trust, the said trust is private, non-statutory. Therefore precludes me from disclosing any of which you have requested. If you have specific questions, please put those in writing and I will pass them to the principals.*

A copy of the letter, dated November 22, 2010, is attached to this declaration as **Exhibit 1**.

7. On November 30, 20108, respondent failed to appear and provide the information and records requested in the summons.

8. On December 7, 2010, Nhi Luu, the Senior Attorney from the Office of Chief Counsel for the Internal Revenue Service, Small-Business/Self-Employed Division, mailed a letter to respondent advising her that if she did not appear and provide

testimony and the requested records on December 20, 2010, at 10:00 A.M., then the government may bring legal proceedings against her for hers failure to comply with the summons. A copy of the letter, dated December 7, 2010, is attached to the petition as Exhibit C.

9. On December 20, 2010, respondent failed to appear and provide the information and records requested in the summons.

10. To date, respondent has failed to appear and provide the records requested in the summons.

11. The records and testimony sought by the summons are not already in the possession of the Internal Revenue Service. The production of information and records sought by the summons is necessary to enable the Internal Revenue Service to collect the outstanding assessed income tax liability of the respondent for the 2008 taxable year.

12. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of December, 2010

Teresa Kelly
Teresa Kelly
Revenue Officer
IRS ID #1000534570

Certified Mail # 7008 3230 0001 5898 0767

tracy jean heineck
30666 south fifth street
Lebanon, Oregon Republic
non-domestic [97355]

NOTICE TO THE PRINCIPLE IS NOTICE TO THE AGENT
NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPLE

22 November 2010

Teresa Kelly
1660 Oak Street
Suite 300 MS 0790
Salem, OR 97301

Dear Ms. Kelly

Due to late notification, being that I am not currently within state, I am unable to attend requested meeting.

In regards to the mentioned trust, the said trust is private, non-statutory. Therefore precludes me from disclosing any of which you have requested. If you have specific questions, please put those in writing and I will pass them on to the principals.

Thank you for your time,

... tracyjeanheineck

Enc: Certificate of Service

true and correct copy
22 Nov 2010
tracyjeanheineck

EXHIBIT 1

30666 South fifth st.
Lebanon, Oregon Republic
non-domestic [97355]

CERTIFIED MAIL

7008 3230 0001 5898 0767

RETURN RECEIPT REQUESTED

INTERNAL REVENUE SERVICE
SB/SE-COMPLIANCE FIELD
NOV 26 2010
AREA 12 TERRITORY 07
SALEM, OREGON

1000

97301

U.S. POSTAGE PAID
LAWTON, OK
73501
NOV 23,
AMOUNT
$5.5
000252

Teresa Kelly
1660 Oak St.
Suite 300 MS 0790
Salem, OR 97301

NOTARY CERTIFICATE OF SERVICE

I hereby certify, declare, or otherwise affirm that I have witnessed the serving of an original/true and correct copy of the following:

Letter to Teresa Kelly, dated 22 Nov 2010,
cert mail number 7008 3230 0001 5898 0767 — 1 page

Certificate of Service — 1 page

Enclosed a total of two (2) pages with this mailing:

To the following party: Teresa Kelly
1660 Oak St.
Suite 300 MS 0790
Salem, OR 97301

Notice to Principal is notice to agent and Notice to agent is notice to Principal.

Said service was made USPS Certified mail number 7008 3230 0001 5898 0767 First class, postage prepaid. Sent to the above address via United States Post Office on this 23 day of November 2010.

THE STATE of OKLAHOMA)
) Subscribed and Affirmed
THE COUNTY of Comanche)

Acknowledged before me this 23 day of November A.D. 2010

Notary Signature

My Commission expires on 8/10/2014

Seal

True and correct copy
23 NOV 2010
[signature]

EMILY L. FSQUER
NOTARY PUBLIC
State of Oklahoma
Comm. # 10006549

Summons

In the matter of TRACY J HEINECK, 30696 S 5TH ST, LEBANON, OR 97355-9208

Internal Revenue Service (Division): SMALL BUSINESS/SELF EMPLOYED

Industry/Area (name or number): SB/SE AREA 6 (26)

Periods: Form 1040 for the calendar period ending December 31, 2008

The Commissioner of Internal Revenue

To: TRACY J HEINECK

At: 30696 S 5TH ST, LEBANON, OR 97355-9208

You are hereby summoned and required to appear before TERESA KELLY, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the collection of the tax liability concerning the person identified above for the periods shown.

See attachment.

*****Under IRC §7609c(2)d, this summons is exempt from the notice requirements pertaining to third party summonees. *****

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1660 OAK ST SE SUITE 300, MS O790, SALEM OR 97301 (503) 587-3128

Place and time for appearance at 1660 OAK ST SE SUITE 300 SALEM, OR 97301

on the 30th day of November, 2010 at 8:00 o'clock a m.

Issued under authority of the Internal Revenue Code this 19th day of November, 2010

IRS
Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 12-2008)
Catalog Number 21405J

TERESA KELLY *Teresa Kelly* — REVENUE OFFICER
Signature of issuing Officer — Title

HESTER PULLING *by Teresa Kelly* — GROUP MANAGER
Signature of Approving Officer (if applicable) written approval — Title

Exhibit B
Page 1

Original — to be kept by IRS

Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
11-18-2010	3:35 pm

How Summons Was Served

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☒ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): [illegible] OR 97[illegible]

3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: ______

Signature	Title
Teresa Kelly	Revenue Officer

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: ______ Time: ______

Name of Noticee: ______

Address of Noticee (if mailed): ______

How Notice Was Given

☐ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.

☒ No notice is required.

Signature	Title
Teresa Kelly	Revenue Officer

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature	Title
N/A	N/A

Form 2039 (Rev. 12-2008)

SUMMONS ATTACHMENT

IN THE MATTER OF: TRACY HEINECK

SUMMONSED PARTY: TRACY HEINECK

In addition to testimony, you are required to furnish all records in your possession pertaining to the following trust(s): Silver Pearl Trust, David Robinson Trustee. These records are to include, but are not limited to:

1. The documents establishing the trust.
2. All documents pertaining to the governance of the trust.
3. All bank records pertaining to trust bank accounts.
4. Records of minutes for any and all trustee meetings.
5. Correspondence between you and any other trustees, trustors, beneficiaries and any other persons involved with the trust(s).
6. Correspondence with attorneys working on behalf of the trust(s).
7. All records pertaining to property in which the trust(s) have an interest.
8. Insurance records.

Note: "UNDER IRC 7609 (c)(2)(D), THIS SUMMONS IS EXEMPT FROM THE NOTICE REQUIREMENTS PERTAINING TO THIRD PARTY SUMMONSES."

"I hereby certify that I have examined and compared this copy of the summons with original and that it is a true and correct copy of the original."

Teresa Kelly ____________________, Revenue Officer

sumtrust